

§ 404.333

20 CFR Ch. III (4-1-00 Edition)

you remarry the insured who is not yet entitled to old-age benefits.

(4) If you are under age 62, there is no longer a child of the insured who is under age 16 or disabled and entitled to child's benefits on the insured's earnings record. (See paragraph (c) of this section if you were entitled to wife's or husband's benefits for August 1981 on the basis of having a child in care.) (If you no longer have in your care a child who is under age 16 or disabled and entitled to child's benefits on the insured's earnings record, your benefits may be subject to deductions as provided in § 404.421.)

(5) The insured person dies or is no longer entitled to old age or disability benefits. Exception: Your benefits will continue if the insured person was entitled to disability benefits based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of his or her disability (as described in § 404.1535), the insured person's benefits ended after 36 months of benefits (see § 404.316(e)) or 12 consecutive months of suspension for noncompliance with treatment (see § 404.316(f)), and but for the operation of these provisions, the insured person would remain entitled to benefits based on disability.

(6) If your benefits are based upon a deemed valid marriage and you have not divorced the insured, you marry someone other than the insured.

(7) You die.

(8) You became entitled as the divorced wife or the divorced husband before the insured person became entitled, but he or she is no longer insured.

(c) If you were entitled to wife's or husband's benefits for August 1981 on the basis of having a child in care, your entitlement will continue until September 1983, until the child reaches 18 (unless disabled) or is otherwise no longer entitled to child's benefits, or until one of the events described in paragraph (b) (1), (2), (3), (5), (6) or (7) of this section occurs, whichever is earliest.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21926, May 16, 1983; 49 FR 24115, June 12, 1984; 51 FR 11911, Apr. 8, 1986; 58 FR 64891, Dec. 10, 1993; 60 FR 8145, Feb. 10, 1995; 64 FR 14608, Mar. 26, 1999]

§ 404.333 Wife's and husband's benefit amounts.

Your wife's or husband's monthly benefit is equal to one-half the insured person's primary insurance amount. If you are entitled as a divorced wife or as a divorced husband before the insured person becomes entitled, we will compute the primary insurance amount as if he or she became entitled to old-age benefits in the first month you are entitled as a divorced wife or as a divorced husband. The amount of your monthly benefit may change as explained in § 404.304.

[51 FR 11912, Apr. 8, 1986]

§ 404.335 Who is entitled to widow's or widower's benefits.

You may be entitled to benefits as the widow or widower of a person who was fully insured when he or she died. You are entitled to these benefits if—

(a) You are the insured's widow or widower based upon a relationship described in §§ 404.345 through 404.346, and one of the following conditions is met:

(1) Your relationship to the insured as a wife or husband lasted for at least 9 months immediately before the insured died.

(2) Your relationship to the insured as a wife or husband did not last 9 months before the insured died, but at the time of your marriage the insured was reasonably expected to live for 9 months, and—

(i) The death of the insured was accidental. The death is accidental if it was caused by an event that the insured did not expect; it was the result of bodily injuries received from violent and external causes; and as a direct result of these injuries, death occurred not later than 3 months after the day on which the bodily injuries were received. An intentional and voluntary suicide will not be considered an accidental death;

(ii) The death of the insured occurred in the line of duty while he or she was serving on active duty as a member of the uniformed services as defined in § 404.1019; or

(iii) You had been previously married to the insured for at least 9 months.

(3) You and the insured were the natural parents of a child; or you were married to the insured when either of

you adopted the other's child or when both of you adopted a child who was then under 18 years old.

(4) In the month before you married the insured, you were entitled to or, if you had applied and had been old enough, could have been entitled to any of these benefits or payments: widow's, widower's, father's (based on the record of a fully insured individual), mother's (based on the record of a fully insured individual), wife's, husband's, parent's, or disabled child's benefits; or annuity payments under the Railroad Retirement Act for widows, widowers, parents, or children age 18 or older;

(b) You apply, except that you need not apply again if—

(1) You are entitled to wife's or husband's benefits for the month before the month in which the insured dies and you are 65 years old or you are not entitled to either old-age or disability benefits;

(2) You are entitled to mother's or father's benefits for the month before the month in which you become 65 years old;

(3) You are entitled to wife's or husband's benefits and to either old-age or disability benefits in the month before the month of the insured's death, you are under age 65 in the month of death, and you have filed a Certificate of Election in which you elect to receive reduced widow's or widower's benefits; or

(4) You applied in 1990 for widow's or widower's benefits based on disability, and:

(i) You were entitled to disability insurance benefits for December 1990, or eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this chapter, respectively, for January 1991; and

(ii) You were found not disabled for any month based on the definition of disability in §§ 404.1577 and 404.1578, as in effect prior to January 1991, but would have been entitled if the standard in § 404.1505(a) had applied. (This exception to the requirement for filing an application is effective only with respect to benefits payable for months after December 1990.);

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1505 and—

(1) Your disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability, whichever occurred last;

(2) Your disability continued during a waiting period of 5 full consecutive months, unless months beginning with the first month of eligibility for supplemental security income or federally administered State supplementary payments are counted, as explained in paragraph (c)(3) of this section. The waiting period may begin no earlier than the 17th month before you applied; the fifth month before the insured died; or if you were previously entitled to mother's, father's, widow's, or widower's benefits the 5th month before your entitlement to benefits ended. If you were previously entitled to widow's or widower's benefits based upon a disability, the waiting period is not required;

(3) For monthly benefits payable for months after December 1990, if you were or have been eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this chapter, respectively, your disability does not have to have continued through a separate, full 5-month waiting period before you may begin receiving benefits. We will include as months of the 5-month waiting period the months in a period beginning with the first month you received supplemental security income or a federally administered State supplementary payment and continuing through all succeeding months, regardless of whether the months in the period coincide with the months in which your waiting period would have occurred, or whether you continued to be eligible for supplemental security income or a federally administered State supplementary payment after the period began, or whether you met the nondisability requirements for entitlement to widow's or widower's benefits. However, we will not pay you benefits

under this provision for any month prior to January 1991; and

(4) You have not previously received 36 months of payments based on disability when drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535), regardless of the number of entitlement periods you may have had, or your current application for widow(er)'s benefits is not based on a disability where drug addiction or alcoholism is a contributing factor material to the determination of disability.

(d) You are not entitled to an old-age benefit that is equal to or larger than the insured person's primary insurance amount; and

(e) You are unmarried, unless—

(1) You remarried after you became 60 years old; or

(2) For benefits for months after 1983—

(i) You are now age 60 or older;

(ii) You remarried after attaining age 50 but before attaining age 60; and

(iii) At the time of the remarriage, you were entitled to widow(er)'s benefits as a disabled widow(er); or

(3) For benefits for months after 1983—

(i) You are now at least age 50 but not yet age 60;

(ii) You remarried after attaining age 50; and

(iii) You met the disability requirements in paragraph (c) of this section at the time of your remarriage (i.e., your disability began within the specified time and before your remarriage).

[44 FR 34481, June 15, 1979, as amended at 47 FR 12162, Mar. 22, 1982; 49 FR 24115, June 12, 1984; 51 FR 4482, Feb. 5, 1986; 51 FR 10616, Mar. 28, 1986; 55 FR 25825, June 25, 1990; 57 FR 30119, July 8, 1992; 59 FR 14747, Mar. 30, 1994; 60 FR 8145, Feb. 10, 1995]

§ 404.336 Who is entitled to widow's or widower's benefits as a surviving divorced spouse.

You may be entitled to widow's or widower's benefits as the surviving divorced wife or the surviving divorced husband of a person who was fully insured when he or she died. You are entitled to these benefits if—

(a) You are the insured's surviving divorced wife or surviving divorced husband and—

(1) You were validly married to the insured under State law as described in § 404.345 or are deemed to be validly married as described in § 404.346; and

(2) You were married to the insured for at least 10 years immediately before your divorce became final;

(b) You apply, except that you need not apply again if—

(1) You are entitled to wife's or husband's benefits for the month before the month in which the insured dies and you are 65 years old or you are not entitled to old-age or disability benefits;

(2) You are entitled to mother's or father's benefits for the month before the month in which you become 65 years old;

(3) You are entitled to wife's or husband's benefits and to either old-age or disability benefits in the month before the month of the insured's death, you are under age 65 in the month of death, and you have filed a Certificate of Election in which you elect to receive reduced widow's or widower's benefits; or

(4) You applied in 1990 for widow's or widower's benefits based on disability, and:

(i) You were entitled to disability insurance benefits for December 1990, or eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this chapter, respectively, for January 1991; and

(ii) You were found not disabled for any month based on the definition of disability in §§ 404.1577 and 404.1578, as in effect prior to January 1991, but would have been entitled if the standard in § 404.1505(a) had applied. (This exception to the requirement for filing an application is effective only with respect to benefits payable for months after December 1990.);

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1505 and—

(1) Your disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability, whichever occurred last;